

Solid Waste Coalition Comments – Draft Solid Waste Rules

I. GENERAL COMMENTS

The Solid Waste Statute provides direction to the Arizona Department of Environmental Quality (“ADEQ” or “Agency”) in developing solid waste rules at A.R.S. 49-761(A) as follows:

In adopting rules, the department shall consider the nature of the waste streams at the facilities to be regulated. The department shall also consider other applicable federal and state laws and rules in an effort to avoid practices or requirements that duplicate, are inconsistent with or will result in dual regulation with other applicable rules and laws.

ADEQ has not adequately addressed these statutory considerations in its current draft solid waste rules. Specifically, many of the substantive and procedural requirements for the different types of solid waste facilities, (i.e., best management practices (“BMP”), self-certification, and plan approval) are the same regardless of the type of wastes handled at the facility. For example, a non-municipal solid waste landfill (“NMSWL”) that accepts only construction and demolition debris materials must comply with the same liner and groundwater requirements that ADEQ proposes for municipal solid waste landfills (“MSWLF”). We believe ADEQ is required, pursuant to the Solid Waste Statute, to consider the differences and unique nature of individual waste streams in the regulations and tailor the regulations appropriate to the stream.

In addition, ADEQ is required to consider other federal and state laws in developing its regulations. Aspects of ADEQ’s draft solid waste rules duplicate areas that are regulated under other programs. Potentially, this dual regulation could, at one extreme, require facilities to comply with conflicting requirements, and at a minimum, waste resources by duplicating regulation that is unnecessary. For example, certain solid waste facilities must control run-on and run-off to and from the solid waste facility. This type of regulation seems better suited to the stormwater program rather than the solid waste program. Other examples of duplicative provisions in the draft solid waste rules include emergency preparedness provisions which are covered by the Occupational Safety and Health Administration at 29 C.F.R. § 1910, subpart E, incorporated by reference at A.A.C. R20-5-602 and tire storage requirements provided in the International Fire Code (2003) incorporated by reference at A.A.C. R4-36-201.

The Solid Waste Statute is structured such that it contemplates a tiered regulatory approach for solid waste facilities, varying the level of regulation depending on the type of facility. See A.R.S. 49-762, 762.01 and 762.02. The Solid Waste Statute sets forth minimal BMP standards for certain types of facilities that are small and pose a minimal risk to human health and the environment followed by slightly more stringent requirements (self-certification) for larger solid waste facilities that pose more risk to human health and the environment. The Solid Waste Statute only imposes plan approval and the highest level of regulation, on certain specified solid waste facilities – those that would pose the greatest risk. Notwithstanding the statute’s tiered approach to regulating solid waste facilities, the draft solid waste rules impose similar requirements on all types of solid waste facility. Very little consideration appears to have been given to the type of solid waste facility in developing the regulatory program. For instance, the draft solid waste rules impose similar waste screening, leachate control and container and

tank requirements on both BMP and self-certification solid waste facilities. The Solid Waste Statute distinguishes between these two types of facilities and recognizes that regulations applicable to BMP facilities should be minimal and ADEQ's imposition of similar requirements on both types of facilities fails to recognize the statutory distinction. As a result, low risk BMP facilities will be subject to extremely prescriptive and expensive requirements. ADEQ should, consistent with the statutory approach, develop a regulatory program with limited regulation applicable to BMP facilities, increasing the level of regulation for a self-certification facility, and, finally, reserve the most prescriptive standards for plan approval facilities.

ADEQ has included a number of provisions in the draft solid waste rules that are based on an interpretation of the authority granted to the Director by statute (A.R.S. 49-761(B) and (C)) to regulate MSWLFs and NMSWLFs, respectively. Essentially, the statute directs ADEQ to regulate landfills in accordance with the applicable federal regulations (40 C.F.R. part 258 for MSWLFs and 40 C.F.R. part 257 for NMSWLFs), except that "the department may adopt aquifer protection standards that are more stringent than [the applicable federal regulation – part 258 or part 257] if those standards are consistent with and no more stringent than standards developed pursuant to chapter 2, article 3 of this title [APP Statute], or if the standards adopted pursuant to article 9 of this chapter [Special Waste Statute]." A.R.S. 49-761(B)(1) and similar language in A.R.S. 49-761(C).

A key factor in determining whether the draft solid waste rules are consistent with the statutory authority is an understanding of the legislative intent of the phrase "aquifer protection standards." A.R.S. 49-761(B)(2) makes clear that the legislature intended that those aquifer water quality standards adopted pursuant to A.R.S. 49-223 which are more stringent than those listed in 40 C.F.R. part 258, Table 1 to be the enforceable water quality standards. The text at the beginning of A.R.S. 49-761(B) "[f]or purposes of administering 42 United States Code § 6945, as amended November 8, 1984, 40 C.F.R. part 258 is adopted by reference except as prescribed by paragraph 2 of this subsection" appears to indicate that the legislature was intending for ADEQ to enforce 40 C.F.R. part 258 as written with the exception of utilizing more stringent numerical aquifer water quality standards. A.R.S. 49-761(B)(1) indicates that the department "may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 258..." but does not define which portions of the 40 C.F.R. part 258 regulations are considered "aquifer protection standards." The draft solid waste rules also impose new requirements that plan approval facilities demonstrate that the "aquifer protection standards of 18 A.A.C. 13, Article 11 will be met" but do not indicate which portions of Article 11 are considered to be "aquifer protection standards" (R18-13-1102(A)(3)). The draft solid waste rules also require that new facilities or lateral expansions of existing facilities demonstrate compliance with the criteria in A.R.S. 49-243(B) through (I) [Criteria for issuance of an individual Aquifer Protection Permit]. Since many elements of a solid waste facility, implemented to achieve compliance with 40 C.F.R. part 258, have no, or only an indirect, impact on groundwater quality, it would be beneficial if ADEQ were to specifically enumerate which features of a solid waste facility are required to demonstrate compliance with the Aquifer Protection Permit ("APP") criteria, and exclude all other design features of the facility from the requirements of R18-13-1105(A).

In addition to the previous discussion, it should be noted that A.R.S. 49-761(B)(1) provides that "the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 258..." [emphasis added] but do not require the department to do so. Since

the APP rules are written for a wide range of types of facilities, they contain procedural requirements which are unduly burdensome for landfill facilities. A primary intent of the APP rules is to control “discharges” from facilities using the “Best Available Demonstrated Control Technology” (“BADCT”). This regulatory approach is utilized since many APP facilities do discharge materials to the vadose zone and/or groundwater as part of their typical operational practice (for example a wastewater treatment plant which discharges effluent to surface water, which then infiltrates through the vadose zone into the groundwater as part of the normal operations of the facility). A BADCT criterion is established to reduce the amount of pollutants released into the environment through these discharges to protect human health and the environment, but subject to technological and economic limitations. The implications of this approach for landfill facilities would be to require:

1. A complex and relatively expensive hydrogeological investigation and engineering demonstration for all facilities (per the combined requirements of R18-13-1102(A)(3) and R18-13-1115(C)); and,
2. A complex and relatively expensive technical and economic analysis for any new facility or lateral expansion to an existing facility which includes any deviation from the prescriptive design standards listed in R18-13-1105(C) through (F).

Recognizing that landfill facilities should not be discharging liquids to the underlying vadose zone during normal operations, EPA established prescriptive design criteria for landfill controls (including liners and final covers) and established equivalency criteria for alternative designs. The prescriptive design was developed to prevent releases of liquids from the landfill facility to the vadose zone under normal operations and to require groundwater monitoring to identify abnormal circumstances (such as leaks through the liner system), unless no potential for migration to groundwater can be demonstrated. In the event that groundwater monitoring indicates that there has been a release from the landfill, the corrective action requirements contained in 40 C.F.R. part 258 would be implemented. This regulatory approach maintains requirements to monitor for and respond to releases that do occur but does not require technical and economic demonstrations for discharges that are not anticipated to occur and is therefore better for facilities whose design is not intended to release any liquids beneath the landfill liner system. The effects on the proposed rule of using this regulatory approach would include:

1. Changing the demonstration standard for alternative designs from an essentially subjective BADCT standard to a more objective standard of equivalency to the prescriptive design enumerated in the rule.
2. Eliminating the requirements to quantify proposed facility discharges which are not anticipated to occur (R18-13-1102(A)(3)(d)).
3. Eliminating requirements to do a detailed technical and economic analysis of available alternatives for facility control systems, when control technologies for landfills are already well defined with a history of effective performance (R18-13-1102(A)(3)(e)).
4. Eliminating the requirement to define and analyze a discharge impact area when no discharge of liquids from the facility is anticipated (R18-13-1102(A)(3)(g)).

Based on the language of A.R.S. 40-761(B)(1) (“...may adopt...”), ADEQ has the authority to implement this type of regulatory approach, which maintains protection of human health and the environment without unduly adding to the cost and operational burdens of landfill owners and operators

Cost of implementation of the draft solid waste rules, especially for publicly owned solid waste facilities with limited funding, is an extremely important consideration that should guide ADEQ throughout the rule development process. The draft solid waste rules impose significant costs on owners and operators of solid waste facilities. For example, the draft solid waste rules impose waste screening requirements on each type of solid waste facility. As part of the waste screening requirements, a solid waste facility is required to perform inspections, keep records, train its employees, notify the Agency when prohibited wastes are discovered and properly handle the prohibited wastes. These requirements are excessive for all types of solid waste facilities and should be limited to those instances and those facilities where necessary. Specifically, waste screening should not be required where the solid waste will eventually be transferred to a solid waste landfill. Since municipal solid waste landfills are required to screen wastes, the risk of improper disposal of prohibited solid waste is minimized. Furthermore, solid waste landfills are generally larger facilities with more staff and are better equipped to conduct the screening. Rather than imposing screening requirements at remote, dispersed locations at considerable cost, ADEQ should limit the screening to solid waste landfills and those facilities that typically do not transfer the solid waste to a solid waste landfill.

Other costly requirements include the container and tank requirements imposed on all types of solid waste facilities. These provisions impose, among other things, secondary containment, leak testing and handling requirements. Many of these requirements appear to have been based on other regulatory programs, such as the hazardous waste program and the spill prevention control and countermeasures program. These programs, however, regulate materials that pose a much greater risk to human health and the environment, namely hazardous wastes, and regulated substances (i.e., hazardous substances and petroleum products) and are inappropriate for solid wastes. Since solid wastes do not pose the level of risk as hazardous wastes or regulated substances, the imposition of similar costly and prescriptive requirements is inappropriate.

In addition, the costs associated with constructing and operating the leachate and stormwater collection systems, should ADEQ include these requirements in the final version of the rule package, will impose significant financial burdens on solid waste facilities. These costs are unnecessarily burdensome, especially for small BMP and self-certification facilities. ADEQ should carefully evaluate the financial impacts these requirements will have on solid waste facilities prior to moving forward with the draft solid waste rules.

The economic cost impacts associated with implementing many of the provisions of the draft solid waste rules will inevitably result in a reduction in services provided by owners and operators of solid waste facilities. Some facilities will become too expensive to operate. Consequently, many of the services provided to the public will be eliminated and alternate disposal or handling of solid waste services will be required. Unfortunately, this reduction in services will likely impact the public by increased costs for solid waste services, decreased convenience and potentially increased wildcat dumping. Given these realities, ADEQ should

carefully consider the cost implications in developing the solid waste rules and eliminate those provisions that do not realize sufficient benefit when compared to the cost of compliance.

The draft solid waste rules impose requirements on owners and operators of solid waste facilities to “prevent” certain activities. For example, R18-13-603 requires the owner or operator of a solid waste facility to “prevent unauthorized vehicular traffic... and prevent scavenging and unauthorized dumping of wastes.” Use of the word “prevent” implies that solid waste facilities where one of the prohibited activities occurs would be non-compliant with the rules and potentially subject to penalties. This is an especially harsh result given that many of the activities that an owner or operator is required to “prevent” are the activities of third parties, over whom, the owner or operator of the solid waste facility has little control. Thus, we recommend that the word “prevent” be replaced with the word “control.” Allowing the owners or operators of solid waste facilities this flexibility will ensure that systems are in place to control the prohibited activities, but a single non-compliant event will not necessarily be a violation of the rules. This is a more equitable result, especially since it may be a third party that causes the regulatory “prevent” violation.

The applicability sections for both BMP and self-certification facilities should be clarified to confirm that activities that occur on-site are not subject to regulation as solid waste facilities. Although it is clear in some instances that the draft solid waste rules do not apply to solid wastes generated on-site, this limitation is unclear in other instances. Since the Agency’s draft solid waste rules are intended to regulate solid waste facilities, incidental handling of solid waste generated on-site should not be subject to any of the BMP or self-certification provisions. As such, we have revised those applicability provisions for BMP and self-certification facilities to clarify that they only apply to solid waste received from off-site.

Several provisions of the draft solid waste rules require that the owner or operator of a solid waste facility post information to inform the public of hours of operation, acceptable wastes, telephone number of the owner or operator, and notice of closure. See R18-13-603.B. Since many of the facilities that will be regulated are not open to the public, these notifications are not appropriate in all cases. ADEQ should revise these notice requirements to exclude a public notice requirement for those solid waste facilities that are not open to the public.

ADEQ should clarify several provisions in Article 11 dealing with expansion of solid waste facilities. In many cases, the Agency appears to intend the requirement be triggered where the lateral expansion goes beyond the current permitted boundary. In other instances, ADEQ appears to intend the expansion language to be triggered for any construction activity. Because there is confusion related to the use of the term expansion, clarifying language should be added to the relevant sections.

II. SPECIFIC COMMENTS

ARTICLE 1: GENERAL

A. R18-13-101. Applicability.

1. A new section outlining the applicability of the rule package should be added. During the Stakeholder process, ADEQ provided specific examples of solid waste facilities that it is not intending to regulate and that would not be subject to the draft solid waste rules. However, since several of the facilities that ADEQ identified as being excluded may fall within the applicability sections in the revised draft solid waste rules, ADEQ should clarify and specifically enumerate those facilities it did not intend to regulate as part of the rule package. In addition, to the specific types of facilities that are not subject to the draft solid waste rules, ADEQ also indicated during the Stakeholder process that it did not intend to regulate solid waste facilities that are operating under an APP. To clarify ADEQ's intent, this exclusion should be identified in the applicability section. This list of exempt facilities does not include the list of exempt facilities under the statutory definition of "solid waste facility."

B. R18-13-101. Solid Waste Definitions.

2. Several of the definitions repeat the definitions contained in the statute. We recommend not duplicating any of the definitions in the rules. However, if ADEQ chooses to include statutorily defined terms in the regulations, the most important definitions for the solid waste program should be included, namely the definition of "solid waste" and "solid waste facility."
3. A definition of "aquifer" should be included in the draft solid waste rules. We recommend using the definition in 40 C.F.R. part 258. This definition will be used to define "groundwater."
4. Clean closure is an APP program concept. Therefore, ADEQ should limit its use to APP concepts and not include solid waste regulatory concepts within its meaning. As such, subparagraph a. of the definition should be eliminated. Additionally, the non-procedural provisions that are more stringent than the 257 and 258 requirements for municipal solid waste landfills and non-municipal solid waste landfills that are not related to aquifer protection standards adopted pursuant to chapter 2, article 3 of title 49 exceed ADEQ's statutory authority. A.R.S. 49-761.B.
5. The definition of "contaminated soil" should be revised to include remediation standards that are developed by any of the methods prescribed in A.R.S. 49-152. Furthermore, contaminated soils should not include any contaminants that are present in the soil at or below the background concentration in the soils for a particular constituent.
6. The definition of "contiguous" should be defined to include property that is separated by rights-of-way.
7. The definition of "direct costs" should be revised to exclude the language "but consisting of programmatic cost and non-billable administrative cost" since those costs are normally considered indirect costs. Further, pursuant to A.R.S. 49-762.03(F) solid waste facility plan review costs by ADEQ do "not include indirect costs for the processing, review, approval or disapproval of the plan." Therefore,

ADEQ is statutorily limited in recovering costs for plan approval and this definition should be revised to comport with the statute.

8. The definition of “director” should be revised to include the director of a delegated local health department.
9. The draft solid waste rules should include a definition of “field-generated waste” that encompasses wastes that are generated remote from a particular individual’s place of operations that are brought back to the central location. Additionally, this term can include abandoned wastes that a facility assumes responsibility for their proper disposal. This term can then be applied in the draft solid waste rules to prevent the regulation of this central location or the principal place of operations as a solid waste facility since it receives waste from a remote location. Only upon accumulation of this waste at the principal place of operations is the waste deemed generated.
10. The definition of “full quarter” should be limited to only the days within the quarter.
11. A definition for “geosynthetic clay liner” should be included and also be added to R18-13-1105(C) as an alternative as discussed in the Stakeholder meetings.
12. The definition of “groundwater” should include a capability to yield water. Otherwise, a solid waste facility may be unable to conduct groundwater monitoring that may be required pursuant to the draft solid waste rules. As such, we recommend “groundwater” be defined to include “aquifer” and “uppermost aquifer” concepts as used in 40 C.F.R. part 258.
13. The definition of “incinerator” should be limited to exclude manufacturing operations that may burn solid waste without energy recovery but are not destroying or disposing of the solid waste, rather the facility is using the solid waste as an ingredient in its process or as a substitute for a virgin material.
14. The definition of “material recovery facility” should include a clarification that it does not include on-site activities as well as include language to limit the amount of recyclable material commingled with other non-recyclable materials.
15. The definition of “permanent household hazardous waste collection center” should be revised to provide for a “collection facility” since the draft solid waste rules are worded to apply to facilities rather than centers.
16. The definition of “recycling” should be revised and simplified. ADEQ’s regulatory authority for this rule package is limited to “solid wastes.” As such, ADEQ lacks statutory authority over material “that otherwise would become solid wastes.” ADEQ’s regulatory authority should only arise when materials are a solid waste. Furthermore, ADEQ’s language on when materials are recycled is limited, and does not include other methods of recycling (e.g., closed loop, substitute feedstock, substitute ingredient).

17. The definition of “release” should be revised to exclude, in addition to application of fertilizer, the normal application of pesticides, insecticides, fungicides. Further, the definition of “release” is extremely broad and once a facility has a release it must comply with certain significant requirements, such as sampling and analyzing soil and groundwater upon closure. Either the definition of “release” should be revised to limit its scope or the provisions where the term is used should be qualified where it is applied. Our comments have limited the term where applied in the draft solid waste rules.
18. The definition of “solid waste land disposal facility” should be revised to remove reference to “other solid waste facility in which land disposal occurs.” Currently, ADEQ intends only to regulate solid waste landfills and associated surface impoundments as “solid waste land disposal facilities” and therefore it is unnecessary to include any “other” facilities. When ADEQ adds additional solid waste land disposal facilities it can modify this definition.
19. A definition of StRUT event was added which is referenced in the Applicability section as an example of solid waste facilities that are not subject to regulation under the draft solid waste rules.
20. The definition of “treatment facility” should be revised to clarify that it does not apply to on-site facilities and that it also does not include a recycling facility, since a recycling facility may also meet the definition of a treatment facility.
21. The definition of “unattended” should be revised to clarify that employees must be present to operate the facility. This way, employees routinely present conducting maintenance or other work at the facility would not disqualify the solid waste facility from being classified as “unattended.”

ARTICLE 6: SOLID WASTE FACILITIES SUBJECT TO BEST MANAGEMENT PRACTICES

C. R18-13-600. Solid Waste Facilities Subject to Best Management Practices; Applicability.

22. The applicability section in paragraph 1 should be revised to exclude the additional language regarding the nature of materials that are commingled in a material recovery facility. The definition of a material recovery facility is sufficient and the additional language in this provision may cause confusion and is unnecessary.
23. The applicability section for paragraphs 2 and 3 should be revised to clarify that the provisions only include facilities that receive solid waste from off-site.
24. Paragraph 4 should be revised to exclude glycol based antifreeze from its application. Several facilities currently accept antifreeze that will be recycled. ADEQ has not provided any justification for singling out antifreeze for regulation. Subjecting antifreeze recycling facilities to BMP requirements will likely result in significant

reduction in recycling antifreeze. The draft solid waste rules should not discourage this type of beneficial recycling.

25. Paragraph 4 should also be revised to exclude the 180 day threshold. The 180 day time limitation is consistent with the hazardous waste regulations that apply to small quantity generators (“SQG”). Under the hazardous waste regulations there is not a time limitation for CESQG waste. We believe that ADEQ should not impose standards on CESQG waste that are as, or more, stringent than the standards applicable to SQG that are regulated under the hazardous waste program. Furthermore, this provision should not apply to facilities where the waste is stored for ten days or less. Again, this is consistent with the hazardous waste regulations permitting temporary storage of hazardous waste for a short period without subjecting the facility to the treatment, storage and disposal requirements under the hazardous waste program. Finally, paragraph 4 should be revised to limit this type of facility to one that is “primarily” used for the collection of CESQG waste. Otherwise, this type of facility would include transfer facilities.
26. Paragraph 7 should be revised and subparagraphs a, b and c should be eliminated and included in the applicability section along with all the other solid waste facilities that will not be covered by the draft solid waste rules.

D. R18-13-601. General Requirements for Solid Waste Facilities Subject to Best Management Practices; Requirements for a Solid Waste Facility Notice.

27. Solid waste facilities subject to BMPs that have previously submitted the notice required pursuant to A.R.S. 49-762.07 should not be required to submit another notice after the promulgation of the solid waste regulations. As such, paragraph B should be revised to exclude those facilities that have submitted such a notice.
28. Paragraph D, identifying the contents of the notice, includes information that is not specified in the Solid Waste Statute. The Statute specifically enumerates the information to be provided to ADEQ in the notice and does not authorize ADEQ to request additional information in the notice. Therefore, the non-statutory information in subparagraphs 3.a, 7 and 8 should be eliminated.

E. R18-13-602. Financial Assurance for Solid Waste Facilities Subject to Best Management Practices.

29. The financial assurance provisions for BMP facilities should be revised to clarify that facilities need to comply with Article 18. The current provisions require financial assurance to be “demonstrated” prior to operation. It is unclear whether this “demonstration” requires the financial assurance to be in place prior to the time an existing solid waste facility begins operation or whether submittal to ADEQ for approval is sufficient. Article 18 permits existing facilities to continue to operate without approval provided the financial assurance documents have been submitted to ADEQ.

F. R18-13-603. General Requirements for Solid Waste Facilities Subject to Best Management Practices; Basic Design and Operating Standards.

30. Paragraph A should be revised to eliminate the requirement for BMP facilities to provide for site security during and after hours. Because these facilities may be unattended and/or are relatively small, requiring site security could impose significant financial burdens on the owners and operators that may result in the closure of many of these facilities. Operators of facilities that will be subject to BMPs have not experienced significant issues associated with security at their sites.
31. Paragraph C should be revised to exclude unattended transfer facilities from the scope of the first sentence consistent with the exclusion from the second sentence.
32. Paragraph D provides for run-on and run-off control at a solid waste facility. This provision is duplicative of other state law and would impose a substantial burden on owners of solid waste facilities to comply with ADEQ's proposed standards that are in addition to the other regulatory programs. ADEQ should revise this paragraph to only require run-on and run-off control as provided for under state and local law. Applying the run-on and run-off control to each type of facility is excessive, imposes unnecessary costs and may result in the closure of smaller solid waste facilities. Furthermore, the AZPDES program limits stormwater regulation to be no more stringent than NPDES. See A.R.S. 49-255.01(B). ADEQ cannot regulate stormwater at facilities not subject to such regulation under the NPDES program.
33. A.R.S. 49-762.02 provides the specific BMP requirements for asbestos landfills and does not anticipate additional regulatory requirements. ADEQ should revise paragraph F, which applies to these asbestos landfills, to exclude the additional, non-statutory, BMP requirements of R18-13-603.

G. R18-13-604. Emergency Preparedness for Solid Waste Facilities Subject to Best Management Practices.

34. This entire section should be eliminated. As described in the General Comments above, other regulatory programs provide for emergency preparedness and ADEQ's requirements are duplicative and are inconsistent with its statutory mandate in A.R.S. 49-761(A). Specifically, the Occupational Safety and Health Administration regulations provide for similar requirements. See 29 C.F.R. § 1910, subpart E. However, if ADEQ insists on duplicating the emergency preparedness requirements, paragraph A should be revised to limit its application to BMP facilities other than unattended transfer facilities. Additionally, the communication capabilities requirement should be revised to require the owner or operator to design, construct, operate or maintain the facility to have communication capabilities. Replacing "and" with "or" implies that either the communication capability may be part of the facility or so long as it is operated with such a capability (i.e., operator always has a cell phone) the requirements of this paragraph are satisfied. Further, ADEQ should provide a list of acceptable communication devices to indicate that radios, cell phones, etc. are sufficient.

35. Paragraph B, discussing the fire protection requirements should be limited to **public** fire protection services, since private fire protection services may be available, but at considerable cost. Also, where fire protection services are not available an adequate water supply **or** fire extinguishers or other fire fighting equipment should be permissible. The draft solid waste rules require a water supply **and** fire fighting equipment where fire protection services are unavailable. Mandating a water supply at the covered BMP facilities could impose a significant financial burden and the potential fire risks at these facilities can be adequately mitigated by permitting the alternative suggested above.
36. ADEQ revised the emergency preparedness plan requirements in this section from its previous draft to require an emergency preparedness **procedure**. ADEQ should clarify the significance of this change. If the change from plan to procedure anticipates that the procedure does not have to be in writing, then the requirements for the procedure should be revised. Currently, the requirements are drafted such that they appear to anticipate a written document.
37. Paragraph D requires implementation of the emergency planning procedure in response to a release. Because the term “release” is defined broadly, this provision should be revised to require implementation of the procedure only if the release “poses an imminent and substantial endangerment to public health or the environment.” Otherwise, any release, however insignificant, will trigger this requirement, apparently including windblown litter.

H. R18-13-605. Closure for Solid Waste Facilities Subject to Best Management Practices.

38. Paragraph C requires notice to the Department of an intent to close a solid waste facility at least 90 days prior to closure activities and notice to the general public prior to closure activities. The notice requirements for MSWLF only require a notice to the Department, without a specified time period, and do not require notice to the public. ADEQ should revise this paragraph to be consistent with the requirements for a MSWLF and not be more stringent. Imposing more stringent requirements on BMP and self-certification solid waste facilities than are required for MSWLF is inconsistent with the Solid Waste Statute’s tiered regulatory approach. Finally, if ADEQ insists that this provision is included, the notice to the public should only be required if the solid waste facility is open to the public.
39. Paragraph D requires that a solid waste facility begin closure if the facility has not received any solid waste for 365 days. Because there are many valid reasons why a solid waste facility may not receive waste for 365 days (e.g., consolidation of ownership of landfills where one landfill is left idle and will resume accepting solid waste once the other landfill reaches capacity) and the ability to circumvent the application of this provision (i.e., place solid waste in the facility once per year), this provision should be eliminated. Furthermore, the draft solid waste rules impose significant financial assurance and operational requirements on solid waste facilities such that the Agency’s concern that owners and operators of inactive solid waste facilities will not close facilities in a timely fashion should be minimized.

40. Paragraph E requires, as part of the closure requirements, that an owner or operator sample and analyze soil, groundwater and surface water if there has been a release. This provision should be eliminated since any releases will be addressed in the corrective action provisions in R18-13-606.
41. Paragraph E, subparagraph 5 should be revised to allow more time (i.e., 90 days) to begin closure activities and also provide for an extension upon a demonstration. This time period is too short and does not allow solid waste facilities adequate time to plan and prepare for closure in many instances. Also, since there are financial assurance requirements associated with these solid waste facilities, ADEQ can be assured that closure will not be delayed as the facility must maintain the financial assurance until closure is complete.
42. Paragraph E, subparagraph 7 requires asbestos landfills to comply with the closure and post closure requirements in R18-13-1113 and 1114. The Solid Waste Statute specifically provides the BMPs that are applicable to certain asbestos landfills and does not anticipate additional Agency regulation. As such, this provision should be revised to eliminate the non-statutory requirements.
43. Paragraph F, requiring closure certification, should be eliminated. The Solid Waste Statute does not envision a certification by the owner or operator of a BMP facility. Rather, certification is required for “self-certification” type facilities. Therefore, this provision exceeds the Agency’s statutory authority.

I. R18-13-606. Corrective Actions for Solid Waste Facilities Subject to Best Management Practices.

44. Paragraph A requires the owner or operator of a solid waste facility to conduct corrective action in response to a release from a facility if the release violates or results from a violation of the design and operation standard or if the release causes or threatens to cause a significant adverse effect on human health or the environment. Corrective action is triggered in Solid Waste Statute under specific circumstances. Therefore, this provision should be revised to align with the statutory corrective action applicability language.

J. R-18-13-607. Staffed Transfer Facilities having a daily solid waste throughput of 180 cubic yards or less; Additional requirements.

45. Paragraph A, see Comment 22.
46. Paragraphs B and C relating to waste screening at transfer facilities should be eliminated. As described in the General Comments above, requiring waste screening at the transfer facility places an unnecessary risk and burden on those facilities. These facilities are relatively small and have limited staff to conduct the screening and then to manage any unauthorized wastes. Rather than requiring the various transfer facilities screen the incoming wastes and manage them at the various remote locations, ADEQ should permit the unauthorized wastes to be collected at the transfer

facilities and transferred to the landfills where the landfill facilities have more staff and are better equipped to screen and manage the unauthorized wastes.

47. Paragraph D includes requirements for BMP facilities that use containers. Many of these provisions are extremely burdensome. Specifically, the draft solid waste rules require not only that containers be leak proof, but also require secondary containment. At minimum, the draft solid waste rules should be revised to eliminate secondary containment for containers.
48. Paragraph E should be revised to include the same limitation applicable to containers in this section and that only tanks that are **intended** to handle liquid or semisolid waste **other than that what is commonly found in a municipal solid waste stream** should meet the additional requirements.
49. The secondary containment requirements for tanks as well as the requirement to conduct tightness tests prior to installation in paragraph E should be eliminated. Also, the requirements to design loading and unloading areas to contain spills and accidental releases should be eliminated. The costs of compliance with these provisions is likely prohibitively high and may result in closure of many solid waste facilities.
50. Paragraph E, subparagraph 5 should be revised to eliminate language requiring a determination by a “corrosion expert.” Since there is no standard to determine the qualifications of a corrosion expert, ensuring compliance with this provision will be impossible.
51. Paragraph E, subparagraph 6 should be eliminated. These provisions addressing design considerations for tanks are duplicative of other state and local laws such as building codes. Therefore, these duplicative standards should be eliminated.
52. Paragraph F should be eliminated. These requirements requiring leachate collection and control is extremely burdensome and should not be applied to BMP facilities. Given the tiered approach to regulation of solid waste facilities, application of these burdensome requirements should not include BMP facilities.
53. Paragraph G should be eliminated and the new applicability section should clarify that the draft solid waste rules do not apply to solid waste facilities that are covered by an APP.

K. R18-13-608. Waste piles storing putrescible solid waste or solid waste having the potential to create leachate and having a daily throughput of 180 cubic yards or less; Additional requirements.

54. Paragraph B, C and D, see Comment 46.
55. Paragraph E should be revised to place some limitation on leachate collection and handling, otherwise all contact water would require management under this provision and would require costly leachate collection and handling systems at every solid

waste facility with the leachate collection and control requirements. We recommend limiting these requirements to leachate that poses an imminent and substantial endangerment to public health and the environment.

L. R18-13-609. Permanent Household Hazardous Waste Facilities having a daily throughput of 180 cubic yards or less; Additional requirements.

- 56. Paragraph A should be revised to exclude unattended permanent household hazardous waste facilities. Since many of these facilities are unattended and are managed similarly to unattended transfer facilities, unattended facilities should be excepted from this section as well.
- 57. Paragraph B, C and D, see Comment 46.
- 58. Paragraph E, see Comment 47.
- 59. Paragraph E should be revised to allow the use of lab packs that are permitted for the handling of hazardous wastes under Department of Transportation regulations. Since facilities subject to this section will handle hazardous wastes, albeit exempt from regulation under the hazardous waste program, the same type of packagings that are permitted for hazardous waste should be permitted for the exempt wastes as well.
- 60. Paragraph F, see Comments 49, 50 and 51.
- 61. Paragraph G should be revised to limit its application only where the leachate “poses a substantial endangerment to public health or the environment.” Otherwise, this provision is unreasonably broad and would apply to any contact water regardless of its quality.
- 62. Paragraph H, see Comment 53.
- 63. Paragraph I should be revised to eliminate the requirement that the date waste was first added be included on the container. Since there is no date restriction on the length of time the solid waste can be managed in the container or at the solid waste facility, this requirement is unnecessary and should be eliminated.

M. R18-13-610. Solid waste facilities that are used for the collection of glycol based antifreeze or CESQG waste generated off site, that have a storage capacity of 180 cubic yards or less, and that store the antifreeze or CESQG waste for less than 90 days; Additional requirements.

- 64. Paragraph A should be revised to eliminate glycol based antifreeze from coverage. See Comment 24.
- 65. Paragraph A should also be revised to eliminate the requirement that CESQG waste can only be stored for less than 90 days and provide that CESQG waste stored for 10 days or less is exempt. See Comment 25.

- 66. Paragraph B, C and D, see Comment 46.
- 67. Paragraph E, see Comments 49 and 57.
- 68. Paragraph F, see Comments 49, 50 and 51.
- 69. Paragraph G, see Comment 61.
- 70. Paragraph H, see Comment 53.
- 71. Paragraph I, see Comment 63.

N. R18-13-611. Facilities at which more than 500 and fewer than 5,000 waste tires are stored on any day that are not required to obtain plan approval; Additional requirements.

- 72. Paragraph B should be revised and the specific storage requirements identified should be eliminated. As discussed in the General Comments above, these requirements duplicate other state law requirements. The storage requirements for waste tires are prescribed in Title 44 of the Arizona Revised Statutes as well as the International Fire Code, 2003 Edition, which has been adopted by Arizona. Therefore, ADEQ should eliminate these requirements and avoid duplicative regulation.

O. R18-13-612. Unattended Transfer Facilities having a daily solid waste throughput of 180 cubic yards or less; Additional requirements.

- 73. Paragraph B, see Comment 47.
- 74. Paragraph C should be revised to permit the use of tanks at unattended transfer facilities. The current draft solid waste rules impose obligations on the owner or operator of this type of facility to collect and remove leachate. Therefore, the facilities should be permitted to collect the leachate in tanks and not be restricted to containers to achieve the required leachate control.
- 75. Paragraph D, see Comment 52.
- 76. Paragraph E, see Comment 53.

**ARTICLE 7. SOLID WASTE FACILITIES SUBJECT TO SELF-CERTIFICATION
SECTION**

A. R18-13-700. Solid Waste Facilities Subject to Self-Certification; Applicability.

- 77. Several of the facilities identified in this section do not specifically state the waste must be received from off-site. We provided this clarification where needed.
- 78. Paragraph A, subparagraph 2 should be revised to be more consistent with the definition of waste storage pile used in R18-13-600.

79. Paragraph A, subparagraph 10, related to facilities where asbestos is stored, processed, treated or disposed should be eliminated. Asbestos landfills are subject to specific statutory BMP requirements and are not self-certification solid waste facilities.
80. Paragraph A, subparagraph 12 should be revised to clarify that recycling facilities subject to regulation are only those specifically identified in subparagraph B. Additionally, subparagraph C should be eliminated since the definition of “recycling facility” includes the concepts described in C.
81. Paragraph B, subparagraph 2 should be deleted. Facilities that process “end of life motor vehicles, aircraft, boats, and white goods” by shredding are scrap metal processing facilities that are specifically excluded from the “solid waste facility” definition under A.R.S. 49-701.29(d) and should not be subject to self-certification regulation.
82. Paragraph B, subparagraph 3 should be revised to eliminate facilities that recycle glycol based antifreeze as a solid waste that should be subject to self-certification regulation. See Comment 23.
83. Paragraph D, subparagraph 2 should be deleted. This provision effectively provides a definition of “solid waste” that is inconsistent with and facially broader than the definition of “solid waste” provided at A.R.S. 49-701.01.

B. R18-13-701. General Requirements for Solid Waste Facilities Subject to Self-Certification; Requirement for a Solid Waste Facility Notice; Other Procedural Requirements.

84. Subparagraph B, see Comment 27.
85. Paragraph D, see Comment 28.
86. Subparagraph F should be revised to eliminate the requirement for certification by a professional engineer registered in Arizona. Self-certification facilities are just that – self-certified. Mandating a third party certify compliance with the regulatory standards eliminates the essence of self-certification, taking the responsibility from the owner or operator and placing it with a third party. This is more akin to obtaining approval for the solid waste facility which is not contemplated by the Solid Waste Statute.
87. Paragraph G, see Comment 86.
88. Paragraph H, see Comment 86.
89. Paragraph H should be revised to modify the condition constituting a substantial change. Subparagraph 1 should include a 10 % minimum increase in design capacity to trigger a substantial change. Additionally, subparagraphs 5, 7 and 8 should include “material” to describe the type of change that constitutes a substantial change.

Otherwise, daily changes occurring in costs estimates for closure and in the amount of financial assurance would constitute a substantial change for purposes of this paragraph.

C. R18-13-702. Financial Assurance for Solid Waste Facilities Subject to Self-Certification.

90. See Comment 29.

D. R18-13-703. General Requirements for Solid Waste Facilities Subject to Self-Certification; Basic Design and Operating Standards.

91. Paragraph B should be revised to clarify that the informational signs for self-certification solid waste facilities should be posted at the entrance. Additionally, the signage should only be required for facilities that are open to the public. Finally, the provisions requiring the sign to include “other necessary information” should be eliminated. This standard does not provide the regulated community with sufficient guidance to determine what information is “necessary.”
92. Subparagraph D should be eliminated. This standard requires a schedule of internal inspections and monitoring. These are solid waste management issues best addressed by the owners and operators of solid waste facilities. The Agency should refrain from regulatory provisions that extend into management of solid waste facilities.
93. Subparagraph E, see Comment 32.

E. R18-13-704. Emergency Preparedness for Solid Waste Facilities Subject to Self-Certification.

94. See Comment 34.

F. R18-13-705. Closure for Solid Waste Facilities Subject to Self-Certification.

95. Paragraph C, see Comment 38.
96. Paragraph D, see Comment 39.
97. Paragraph E, see Comments 40 and 41.

G. R18-13-706. Corrective Actions for Solid Waste Facilities Subject to Self-Certification.

98. Paragraph A, see Comment 44.

H. R18-13-707. Transfer Facilities having a daily solid waste throughput of more than 180 cubic yards; Additional requirements.

99. Paragraph A, see Comment 22.
100. Paragraph B, see Comment 47.

- 101. Paragraph C, see Comments 49, 50 and 51.
- 102. Paragraph D, see Comment 52.
- 103. Paragraph E, see Comment 53.
- 104. Paragraph F, subparagraph 2 should be revised to permit solid waste facilities to collect windblown litter that crosses a facility's boundary. Since it is nearly impossible to prevent all windblown litter from crossing the facilities boundaries, the regulations should permit the timely collection of such windblown litter.
- 105. Paragraph F, subparagraphs 3 and 10 should be eliminated. As described above, the emergency preparedness requirements are duplicative of Occupational Safety and Health Administration regulations and therefore should not be regulated under the solid waste program.
- 106. Paragraph F, subparagraph 5 should be eliminated. As described above, run-off and run-on control requirements are duplicative of other regulatory programs. See Comment 32.
- 107. Paragraph F, subparagraph 9, requiring a written plan include a schedule for internal inspections and monitoring of the facility is a management activity should be eliminated. As described above, ADEQ should refrain from regulations that dictate certain management standards.

I. R18-13-708. Waste storage piles having a daily throughput of more than 180 cubic yards; Additional requirements.

- 108. Paragraph A should be revised to track the language used in R18-13-600 for waste piles.
- 109. Paragraph B, C and D, see Comment 46.
- 110. Paragraph E, see Comment 52.
- 111. Paragraph F, see Comment 53.
- 112. Paragraph G, see Comments 32, 105 and 107.

J. R18-13-709. Permanent Household Hazardous Waste Facilities having a daily throughput of more than 180 cubic yards; Additional requirements.

- 113. Paragraph B, C and D, See Comment 46.
- 114. Paragraph E, see Comments 47 and 59.
- 115. Paragraph F, see Comments 49, 50 and 51.
- 116. Paragraph G, see Comment 52.

- 117. Paragraph H, see Comment 53.
- 118. Paragraph I, see Comment 63.
- 119. Paragraph J, see Comments 32, 105 and 107.
- 120. Paragraph K, subparagraph 4 should be eliminated. Since training requirements are addressed under other regulatory programs, any records of such training should not be part of the solid waste rules to avoid duplicative requirements.
- 121. Paragraph M should be eliminated. The Solid Waste Statute does not contemplate submission of an annual report to ADEQ for self-certification facilities. This requirement goes beyond the Agency's statutory authority and therefore should be eliminated.

K. R18-13-710. Certain waste composting facilities not in-vessel; Additional requirements.

- 122. Paragraph B, C and D, see Comment 46.
- 123. Paragraph E, see Comment 47.
- 124. Paragraph F, see Comments 49, 50 and 51.
- 125. Paragraph G, see Comment 52.
- 126. Paragraph H, see Comment 53.
- 127. Paragraph I, see Comment 63.
- 128. Paragraph J, see Comments 32, 105 and 107.

L. R18-13-711. Certain in-vessel waste composting facilities; Additional requirements.

- 129. Paragraph B, C and D, see Comment 46.
- 130. Paragraph E, see Comment 47.
- 131. Paragraph F, see Comments 49, 50 and 51.
- 132. Paragraph G, see Comments 32, 105 and 107.

M. R18-13-712. Incinerators; Additional requirements.

- 133. Paragraph B, C and D should be revised to comport with the waste screening that is required for plan approval facilities. Since solid waste received at an incinerator may not ultimately be disposed of in a solid waste landfill, waste screening may be appropriate. However, the screening should not be more stringent than the screening that is required for a plan approval facility. Imposing more stringent screening obligations on a self-certification solid waste facility than is required for a plan

approval facility is inconsistent with the tiered regulatory approach contemplated by the Solid Waste Statute. Therefore, at a minimum, the waste screening applicable to self-certification facilities should use the language contained in Article 11 and the screening should be limited to hazardous wastes and regulated PCBs and notification to ADEQ of receipt of unauthorized waste should be limited to those materials.

- 134. Paragraph E, see Comment 47.
- 135. Paragraph F, see Comments 49, 50 and 51.
- 136. Paragraph G see Comment 52.
- 137. Paragraph H see Comment 53.
- 138. Paragraph I, see Comments 32, 105 and 107.
- 139. Paragraph K, see Comment 120.

N. R18-13-713. Waste treatment piles containing putrescible waste or waste with the potential to create leachate; Additional requirements.

- 140. Paragraph B, C and D, see Comment 133.
- 141. Paragraph E, see Comment 52.
- 142. Paragraph F, see Comment 53.
- 143. Paragraph G should be eliminated. Many facilities that will fall into this category of solid waste facility will need to use liquids to achieve the treatment required by their processes.
- 144. Paragraph H, see Comments 32, 105 and 107.
- 145. Paragraph I, see Comment 120.
- 146. Paragraph K, see Comment 121.

O. R18-13-714. Waste to energy facilities; Additional requirements.

- 147. Paragraph A should be revised to incorporate a threshold that excludes smaller waste to energy facilities from regulation under this section. Currently, industry, universities and federal and State agencies are developing small waste to energy facilities that can be utilized to produce energy and potentially fertilizer from certain waste streams. These small pilot scale units will be utilized to determine if full scale facilities are feasible. If these small pilot scale facilities are subject to the self-certification requirements, testing will stop due to the significant regulatory and financial burdens associated with compliance with the draft solid waste rules. Therefore, the Agency should exempt small pilot scale waste to energy facilities from the self-certification requirements.

- 148. Paragraph B, C and D, see Comment 133.
- 149. Paragraph E, see Comment 47.
- 150. Paragraph F, see Comments 49, 50 and 51.
- 151. Paragraph G, see Comment 52.
- 152. Paragraph H, see Comment 53.
- 153. Paragraph I, see Comment 63.
- 154. Paragraph J, see Comments 32, 105 and 107.
- 155. Paragraph K, see Comment 120.
- 156. Paragraph M, see Comment 121.

P. R18-13-715. Facilities storing 5,000 or more waste tires on any one day and not required to obtain plan approval; Additional requirements.

- 157. Paragraph B, see Comment 72.
- 158. Paragraph C, see Comments 32, 105 and 107.
- 159. Paragraph D, see Comment 120.
- 160. Paragraph F, see Comment 121.

Q. R18-13-716. Liquid waste treatment facilities; Additional requirements.

- 161. Paragraph B, C and D, see Comment 133.
- 162. Paragraph E, see Comment 47.
- 163. Paragraph F, see Comments 49, 50 and 51.
- 164. Paragraph H, see Comment 53.
- 165. Paragraph I, see Comment 63.
- 166. Paragraph J, see Comments 32, 105 and 107.
- 167. Paragraph K, see Comment 120.
- 168. Paragraph M, see Comment 121.

R. R18-13-717. Recycling facilities; Additional requirements.

- 169. Paragraph B, C and D see Comment 46.

- 170. Paragraph E, see Comment 47.
- 171. Paragraph F, see Comments 49, 50 and 51.
- 172. Paragraph G, see Comment 52.
- 173. Paragraph H, see Comment 53.
- 174. Paragraph I, see Comment 63.
- 175. Paragraph J, see Comments 32, 105 and 107.
- 176. Paragraph K, see Comment 120.
- 177. Paragraph M, see Comment 121.

S. R18-13-718. Waste tire shredding and processing facilities; Additional Requirements.

- 178. Paragraph B, see Comment 72.
- 179. Paragraph C, see Comments 32, 105 and 107.
- 180. Paragraph D, see Comment 120.
- 181. Paragraph F, see Comment 121.

T. R18-13-719. Off site storage facility storing solid waste for greater than 90 days; Additional Requirements.

- 182. Paragraph B, C and D see Comment 46.
- 183. Paragraph E, see Comment 47.
- 184. Paragraph F, see Comments 49, 50 and 51.
- 185. Paragraph G, see Comment 52.
- 186. Paragraph H, see Comment 53.
- 187. Paragraph I, see Comment 63.
- 188. Paragraph K, see Comments 32, 105 and 107.
- 189. Paragraph L, see Comment 120.
- 190. Paragraph N, see Comment 121.

ARTICLE 11. SOLID WASTE FACILITIES SUBJECT TO PLAN APPROVAL

A. R18-13-1101. Solid Waste Facilities Subject to Plan Approval.

B. R18-13-1102. Procedures Related to Plan Approval Facilities.

191. The application requirements in this section should be limited to new solid waste landfills or the lateral expansion of an existing solid waste landfills or for the facilities described in R18-13-1101(A)(2) – (5), the section should apply to an expansion of the solid waste facility. As discussed in the General Comments, this change is intended to clarify the distinction between lateral expansions beyond the permit boundary that should trigger application of the provision and those where any expansion should trigger the application of the provision. This clarification should be addressed throughout Article 11. Furthermore, the language applicable to solid waste facilities that are described in R18-13-1101(A)(1) should be changed to describe the facility as a solid waste landfill as opposed to a solid waste land disposal facility. Since ADEQ currently regulates in the draft solid waste rules only landfills and surface impoundments associated with landfills under this category, the regulations should only address landfills and associated surface impoundments.
192. Additionally, Paragraph A, subparagraph 2.i, which requires submission of any other relevant information required by the Department is too broad and provides unlimited discretion to the Agency in determining what information must be submitted. As such, this requirement should be eliminated.
193. Paragraph A, subparagraph 3.i as well as paragraph B, subparagraph b should be eliminated. The owner or operator of a solid waste facility should not be required to demonstrate any level of training, experience or capability necessary for the operation of its facilities. These provisions are outside the scope of the Agency's rulemaking authority since they are more stringent than 40 C.F.R. parts 257 and 258.
194. Paragraph B, subparagraph 1.c should be revised to eliminate the list of QC/QA testing protocols. This requirement is more stringent than 40 C.F.R. parts 257 and 258. Furthermore, the list of testing protocols should be left to the discretion of professionals in the field constructing the facilities to determine what are the appropriate protocols, which ultimately must be approved by ADEQ.
195. Paragraph B, subparagraph 2 should be revised to include provision for extension of time for the report where the facility can demonstrate a need.
196. Paragraph B, subparagraph 2.a should be revised to eliminate the language "will achieve the highest level of public health and environment protection" and replace with language that confirms only compliance with the solid waste facility plan. Since the solid waste plan must be approved by ADEQ, which is evaluating it under the standard to "achieve the highest level... protection", this provision allows the Agency to re-review the plan. The Agency at this stage should only require the facility to confirm substantial compliance with the plan.

197. Paragraph D, subparagraph 4.e.ii should include “material” with regard to the change in the approved liner. Otherwise, any change, however insignificant, would trigger Type IV change requirements.
198. Paragraph E should be eliminated. The time limitation grants ADEQ too much discretion. Additionally, there are many instances where 18 months is not sufficient time to begin construction since most projects are planned well out in the future.

C. R18-13-1103. Solid Waste Facilities Subject to Plan Approval; General Requirements.

199. Paragraph C should be modified to incorporate the corrective action language used for BMP and self-certification facilities. Furthermore, this provision is limited by the solid waste Statute and does not apply to MSWLF and NMSWLF. Pursuant to A.R.S. 49-762.08, the statutory corrective action requirements do not apply to solid waste landfills (see subsection (A)). The Statute provides in subsection (F) that for a “release from a solid waste facility subject to the provisions of 40 Code of Federal Regulations part 257 or part 258, the corrective action shall be conducted in accordance with the provision of those regulations.” As such, ADEQ’s regulatory authority is limited with respect to corrective actions at MSWLF and NMSWLF.

D. R18-13-1104. Specific Requirements for Municipal Solid Waste Landfills; Restrictive Covenant; Location Restrictions.

200. Subparagraph C, which specifies the locations of MSWLs and limits the placement if the location could result in a washout of solid waste should be revised to permit such location, provided it would not “pose a hazard to human health or the environment.”

E. R18-13-1105. Specific Requirements for Municipal Solid Waste Landfills; Design Standards.

201. As described in the General Comments above, the criteria in A.R.S. 49-243(B) through (I) are not appropriate for MSWLF.
202. Subparagraph B, which specifies construction standards for MSWL and provides design limits as listed in 258 cannot apply to NMSWL. The part 258 requirements therefore should be limited to MSWLF. This provision is referenced in the draft solid waste rules at R18-13-1121(B), which requires NMSWLF to comply with the subparagraph B provisions. Additionally, subparagraph 2 is more stringent than the 40 C.F.R. part 257 requirements and should not apply to NMSWLF.
203. Paragraph C should be revised to include an alternative geosynthetic clay liner. ADEQ agreed in the Stakeholder meetings that adding this alternative liner was acceptable.
204. Paragraph D, should be limited such that it does not apply to NMSWLF. Since the provision is more stringent than 40 C.F.R. part 257, ADEQ cannot impose these requirements on NMSWLF.

205. Paragraph F should be revised to account for the unique soil conditions in Arizona. Based on the preamble to the 40 C.F.R. part 258 rule, as presented in Federal Register Volume 56, Number 196 (Wednesday, October 9, 1991), the Environmental Protection Agency (“EPA”) presented three criteria for the design of the infiltration layer of the prescriptive final cover listed in 40 C.F.R. § 258.60(a)(1).

1. EPA required this layer to be at least 18 inches thick.
2. EPA required the permeability of the infiltration layer to be “less than or equal to the permeability of the bottom liner system or natural subsoils present” in order to prevent the “bathtub” effect which would increase the potential for leachate formation and migration (56 FR 51095).
3. EPA required the permeability of the infiltration layer to be a maximum of 1×10^{-5} cm/s regardless of the permeability of the liner system in order to prevent infiltration of precipitation into the waste at facilities which have no liner systems or systems with poor liners.

Essentially, EPA’s second requirement is focused on preventing buildup of infiltrating water on the landfill liner while the third requirement is focused on infiltration through the cover system into the top of the waste. The understanding of the rationale for the prescriptive cover design is important in developing alternative final cover designs that would meet the intent of 40 C.F.R. § 258.60(b). Since in the arid to semi-arid environment of Arizona, low permeability covers specifically meeting the 40 C.F.R. § 258.60(a)(1) criteria have well documented operational problems due to dessication cracking, ADEQ’s proposed regulation at R18-13-1105(F) could be revised to more clearly indicate the criteria for design of alternative covers deemed to provide equivalent reduction in infiltration.

F. R18-13-1106. Specific Requirements for Municipal Solid Waste Landfills; Operating Standards.

G. R18-13-1107. Specific Requirements for Municipal Solid Waste Landfills; Aquifer Protection Standards; Groundwater Monitoring System.

206. The title for this section should be revised to eliminate “Aquifer Protection Standards” since the term is not used in the regulations and is not defined.
207. As described in the Comments 199 above, ADEQ is limited to the corrective action standards that apply to MSWLF and NMSWLF. Specifically, pursuant to A.R.S. 49-762.08, the corrective action requirements of 40 C.F.R. parts 257 and 258 apply to these landfills and the statute does not contemplate additional requirements. As such, the requirements specified in paragraphs C through H as well as sections R18-13-1108 through 1112 should be eliminated since they are more stringent than the applicable federal regulations. Since all of these sections address the monitoring that leads to corrective action, they should be replaced with reference to the federal requirements.

H. R18-13-1108. Specific Requirements for Municipal Solid Waste Landfills; Alert Levels, Discharge Limitations, and AQLs.

208. See Comments 197 and 207.

I. R18-13-1109. Specific Requirements for Municipal Solid Waste Landfills; Contingency Plans.

209. See Comments 197 and 207.

J. R18-13-1110. Specific Requirements for Municipal Solid Waste Landfills; Monitoring Requirements.

210. See Comments 197 and 207.

K. R18-13-1111. Specific Requirements for Municipal Solid Waste Landfills; Reporting Requirements.

211. See Comments 197 and 207.

L. R18-13-1112. Specific Requirements for Municipal Solid Waste Landfills; Compliance Schedule

212. See Comments 197 and 207.

M. R18-13-1113. Specific Requirements for Municipal Solid Waste Landfills; Closure.

N. R18-13-1114. Specific Requirements for Municipal Solid Waste Landfills; Post Closure.

O. R18-13-1115. Transition for Existing Landfills; Small Landfills.

213. Paragraph A, subparagraph 4 should be eliminated since such expansion is permitted pursuant to 40 C.F.R. § 258.1(f).

214. Paragraph B, subparagraph 1 should be eliminated since this information has already been submitted pursuant to the current 40 C.F.R. part 258 requirements.

215. Paragraph C should be revised to eliminate the requirement that the application include components of R18-13-1102(A)(3). For existing facilities, inclusion of these components is unjustified.

216. Paragraph D, see Comment 53.

P. R18-13-1116. Research, Development, and Demonstration Plan Approval.

Q. R18-13-1121. Specific Requirements for Non-Municipal Solid Waste Landfills.

- 217. Paragraph A, imposing a restrictive covenant and location restriction obligations should be revised to identify the statutory section imposing these requirements. This avoids the confusion of referencing specific sections applicable to MSWLF.
- 218. Paragraph B should be revised to only prescribe standards that are consistent with part 257 unless the standards concern aquifer protection standards per ADEQ's statutory mandate. Many of the provisions referenced in this section apply to MSWLF and are more stringent than the standards applicable to NMSWLF in 40 C.F.R. part 257 and are not "aquifer protection standards."
- 219. Paragraph C should be revised to eliminate the requirement for cover at the end or each operating day. This provision is more stringent than the 40 C.F.R. part 257 requirements and is thus beyond the Agency's statutory authority.
- 220. Paragraph G should be revised to eliminate the reference to the requirements in R18-13-1107 through 1110; rather the applicable standards should be 40 C.F.R. §§ 257.22 through 28. As described in Comments 197 and 207 above, these are the part 257 monitoring and corrective action requirements which ADEQ is limited to imposing on NMSWLF.
- 221. Paragraph H should be eliminated since there are no requirements in 40 C.F.R. part 257 for closure and post closure.

R. R18-13-1122. Specific Requirements for Surface Impoundments Handling Leachate from Landfills; Design and Operation.

- 222. Paragraph D should be revised to correlate with the suggested changes in sections R18-13-1107 through 1112.

S. R18-13-1123. Specific Requirements for Surface Impoundments Handling Leachate from Landfills; Closure.

- 223. Paragraph C, see Comment 39.
- 224. Paragraph D, subparagraph 3 should be eliminated since releases triggering corrective action will already be sampled and analyzed and facilities should not be required to duplicate the sampling efforts.
- 225. Paragraph D, subparagraph 5, should be eliminated since the time requirement to begin closure activities is too short for many facilities to coordinate the necessary activities. Furthermore, as discussed in Comment 39, due to the financial assurance requirements, solid waste facilities will be motivated to conduct and complete closure activities.

T. R18-13-1125. Specific Requirements for Certain Commercial or Government-owned Household Waste Composting Facilities.

- 226. Paragraph C, see Comment 32.

- 227. Paragraph D, see Comment 133.
- 228. Paragraph F, see Comment 47.
- 229. Paragraph G, see Comments 49, 50 and 51.
- 230. Paragraph H, see Comment 104.
- 231. Paragraph I, see Comment 105.
- 232. Paragraph J, see Comment 105.
- 233. Paragraph N, see Comment 35.
- 234. Paragraph O, see Comment 105.
- 235. Paragraph Q, see Comment 105.

U. R18-13-1126. Specific Requirements for facilities storing 500 or more waste tires for more than 12 months, not owned by a county or municipality.

- 236. Paragraph B, see Comment 72.
- 237. Paragraph C, see Comment 32.
- 238. Paragraph E, see Comment 105.
- 239. Paragraph F, see Comment 105.
- 240. Paragraph G, see Comment 105.
- 241. Paragraph H should be revised to require only the reports and plans that are identified in title 44.
- 242. Paragraph J, see Comment 34.
- 243. Paragraph K, see Comment 35.
- 244. Paragraph L, see Comment 105.
- 245. Paragraph M, see Comment 105.
- 246. Paragraph N, see Comment 105.

V. R18-13-1127. Specific Requirements for biosolids processing facilities.

W. R18-13-1128. Additional requirements for medical waste facilities subject to plan approval.

X. R18-13-1129. Additional requirements for special waste facilities subject to plan approval.

**ARTICLE 18. FINANCIAL RESPONSIBILITY FOR SOLID WASTE FACILITIES
SECTION**

A. R18-13-1801. Applicability.

247. Paragraph A, see Comments 17 and 44.

B. R18-13-1802. Financial Responsibility Plan.

248. Paragraphs A and B should be revised to address solid waste facilities that become operational after the rules are adopted but before they become effective.
249. Paragraph C, subparagraph 2 should be revised to include the modifying language to the term release, such that the plan only need include releases that posed an imminent substantial endangerment to human health or the environment. Otherwise, every windblown litter would be required to be included in the plan.
250. Paragraph C, subparagraph 4 should be revised to specify that the financial assurance only need cover the closure costs for the time period up to the next renewal period.
251. Paragraph C, subparagraph 8 should be eliminated. This provision requires an owner or operator's chief financial operator ("CFO") to certify ability to meet the financial assurance obligations. Where a letter of credit or other third party guarantee is used, this requirement should not apply. The CFO's certification should only be necessary in instances where the solid waste facility is self-guaranteeing the financial assurance.
252. Paragraph E, subparagraph 4 should be revised to allow ADEQ to conditionally approve a type III or IV change until the financial assurance is obtained. This facilitates procurement of appropriate financial assurance. Often the company issuing the financial assurance instrument requires approval from the Agency before it will issue the instrument.
253. Paragraph H should also recognize financial assurance that is required pursuant to the Mined Land Reclamation provisions of A.R.S. 49-901 *et seq.*
254. Paragraph I should be eliminated since facilities are already subject to annual updates for financial assurance for plan facilities and triennial updates for other solid waste facilities. These updates should be adequate to ensure that financial assurance is periodically examined to determine adequacy. Otherwise the current provision would require continual updating since costs of labor and materials are constantly changing.

C. R18-13-1803. Acceptable Financial Assurance Mechanisms.

D. R18-13-1804. Plan Amendment; Substitution of Financial Assurance Mechanism; Property Transfers.

E. R18-13-1805. Release from Financial Responsibility.

F. R18-13-1806. Financial Responsibility Plan Administration Fees.